



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

May 16, 2005

CERTIFIED RETURN RECEIPT MAIL

7004 2890 0002 5799 2343

Mr. Andrew Fichthorn, Executive Vice President and General Manager
SeaWorld Adventure Park
500 SeaWorld Drive
San Diego, CA 92109-7904

In reply refer to:
IC: 12-0083.02

Dear Mr. Fichthorn:

**SUBJECT: COMPLAINT NO. R9-2005-0129 FOR ADMINISTRATIVE CIVIL
LIABILITY WITH MANDATORY MINIMUM PENALTY PURSUANT
TO CWC § 13385 FOR VIOLATION OF ORDER NO. 2000-0025,
NPDES PERMIT NO. CA0107336**

REVIEW OF MONITORING REPORT

FACILITY: SEAWORLD, SAN DIEGO

The Regional Board has completed review of the September through December 2004 quarterly monitoring report dated January 19, 2005 and received on January 24, 2005. This report indicates that the wastewater discharges from this facility exceeded the effluent limitations contained in *Order No 2000-0025, NPDES Permit No. CA0107336, Waste Discharge Requirements for SeaWorld, San Diego, San Diego County, Discharge to Mission Bay*, for total suspended solids.

Mandatory Minimum Penalties

The California Water Code (CWC), Sections 13385(h) and (i), require that mandatory minimum penalties be imposed whenever a person violates effluent limitations contained in a waste discharge requirement. In lieu of additional information, the amount of the mandatory minimum penalty that must be assessed for the reported effluent limitation violations is six thousand dollars (\$6,000). The mandatory minimum penalty is described in the enclosed *Complaint No. R9-2005-0129, Administrative Civil Liability with Mandatory Minimum Penalties* for the amount of six thousand dollars (\$6,000) for violations of the effluent limitations established by Order No. 2000-0025.

Please notify this office immediately if you have any information that disputes the validity of these violations or if you can demonstrate the violations are exempt from mandatory penalties per exemption criteria contained in CWC §13385(j). Written documentation supporting a claim that disputes the validity of these violations must be received by 5:00 p.m. Thursday, June 23, 2005.

California Environmental Protection Agency

Waiver of Right to Hearing

You have the option to waive your right to a hearing. Waiver of the hearing constitutes admission of the validity of the allegation of violation in the Complaint and acceptance of the assessment of civil liability in the amount of six thousand dollars (\$6,000) as set forth in the Complaint. Be aware that if you intend to waive your right to a hearing before the Regional Board, you or an authorized agent are required to:

1. Sign and return the enclosed waiver form with a cashier's check for the amount of civil liability indicated in the Complaint by 5:00 p.m., June 23, 2005.
2. Publish the enclosed public notice in a newspaper circulated in the San Diego area no later than June 17, 2005. Verification that the notice has been published must be submitted to this Regional Board no later than June 23, 2005.

Public Hearing

If you do not elect to waive your right to a public hearing, a public hearing on this matter will be held before the Regional Board at its tentatively scheduled meeting on August 10, 2005 at the Regional Board Meeting Room, 9174 Sky Park Court, San Diego, California. At the hearing, the Regional Board will determine the validity of the allegation and, if the allegation is found to be true, will consider whether to assess civil liability in the amount proposed by the Complaint, or in some other amount, provided that, for violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters, mandatory minimum penalties prescribed in subdivisions (h) and (i) of Section 13385 of the CWC will be applicable.

The *Submittal of Written Information Procedures* describing the written materials and prescribed submittal dates required by the Regional Board and *Hearing Procedures* for the public hearing will be mailed to you not less than 30 days before the hearing date. Further, an agenda for the hearing will be mailed to you approximately 10 days before the hearing date.

The Regional Board has no other comments on the above-mentioned report at this time.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Mr. Andrew Fichthorn
SeaWorld Adventure Park
Complaint No. R9-2005-0129

- 3 -

May 16, 2005
WDID 9 000000083

Please contact Mr. Paul J. Richter by e-mail at prichter@waterboards.ca.gov or by telephone at (858) 627-3929 if you have any questions.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mpm:jrp:pjr

Enclosures: ACL Complaint No. R9-2005-0129
Waiver of Hearing Form
Notice of Waiver of Public Hearing for Newspaper Publication

cc: Ms. Kathi Moore, USEPA Region IX
Mark Alpert

File 12:0083.02

Violation code # 199264, 199541
Enforcement code # 102828

g:PJR2/dmr/SeaWorld MMP/mmpLetter.doc

California Environmental Protection Agency

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

**MR. ANDREW FICHTHORN
EXECUTIVE VICE PRESIDENT
AND GENERAL MANAGER
SEAWORLD SAN DIEGO
SEAWORLD ADVENTURE PARK
500 SEAWORLD DRIVE
SAN DIEGO, CA 92109-7904**

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)
)
) **COMPLAINT NO. R9-2005-0129**
) **FOR**
) **ADMINISTRATIVE CIVIL LIABILITY**
) **WITH**
) **MANDATORY MINIMUM PENALTIES**
)
)

May 16, 2005

**VIOLATIONS OF EFFLUENT LIMITATIONS IN)
ORDER NO. 2000-0025, NPDES NO. CA0107336,)
WASTE DISCHARGE REQUIREMENTS FOR)
SEAWORLD SAN DIEGO, SAN DIEGO COUNTY)
DISCHARGE TO MISSION BAY)
WDID NO. 9 000000083)**

SEAWORLD SAN DIEGO IS HEREBY GIVEN NOTICE THAT:

1. SeaWorld San Diego is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, § 13385, of the California Water Code (CWC). The violation alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to navigable waters for which the Regional Board must impose mandatory minimum penalties (MMP).
2. SeaWorld San Diego discharged treated wastewater to Mission Bay subject to waste discharge requirements, including numeric effluent limitations, contained in *Order No. 2000-0025, NPDES No. CA0107336, Waste Discharge Requirements for SeaWorld San Diego, San Diego County, Discharge to Mission Bay*.
3. The CWC Sections 13385 (h) and (i) includes provisions for MMP for serious and chronic violations of waste discharge requirements for surface water discharges. Each serious violation (defined as an exceedence of an effluent limitation for Group I pollutant by 40 percent or more, or for a Group II pollutant by 20 percent or more) is subject to a three thousand dollar (\$3,000) MMP. Furthermore, the occurrence of one or more chronic violations (defined as any effluent violation, in any six-month period) requires the assessment of a three thousand dollar (\$3,000) MMP for the fourth violation and each subsequent violation during the six-month period.

ALLEGATIONS

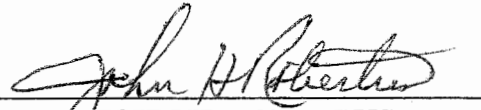
4. During October through December 2004, the discharges for the West Outfall exceeded effluent limitations for suspended solids as noted in *Table 1. Summary of Effluent Violations* (attached).
5. Pursuant to subdivision (h) and (i) of Section 13385 of the CWC, the Regional Board must impose an MMP of six thousand dollars (\$6,000) for the alleged violations of effluent limitations as determined by the following:

On December 15, 2004 the concentration of total suspended solids (a Group I pollutant) in your discharge was 40 mg/L, which exceeded the daily maximum effluent limitation (16.1 mg/L) and the monthly average effluent limitation (11.1 mg/L) by 40% or more.

PROPOSED CIVIL LIABILITY

6. Pursuant to Section 13385(h) of the CWC, the Regional Board must impose mandatory minimum penalties of six thousand dollars (\$6,000) on SeaWorld San Diego. No additional civil liability for the violation alleged in this Complaint is recommended.

Dated this 16th day of May 2005.



JOHN H. ROBERTUS
Executive Officer

No.	Date	Constituent	Effluent Limitation	Unit	Permitted Limit**	Reported Value	Percent Exceedance	Serious Violation (i.e. 40% or greater than limitation)	Mandatory Minimum Penalty
1	12/15/2004	suspended solids	daily maximum	mg/L	16.1	40	248%	yes	\$3,000
2	12/15/2004	suspended solids	monthly average	mg/L	11.1	40	360%	yes	\$3,000
									\$6,000

** Permitted limit for daily maximum is intake concentration plus 15 mg/L.

Permitted limit for the monthly average limitation is intake concentration plus 10 mg/L.

The reported intake concentration for suspended solids on December 15, 2004 was 1.1 mg/L.

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region
Issuance of Administrative Civil Liability (ACL) Order
With Mandatory Minimum Penalties against
SeaWorld San Diego**

On May 16, 2005, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2005-0129 to SeaWorld San Diego in the amount of six thousand dollars (\$6,000) for alleged violations of Regional Board *Order No. 2000-0025, NPDES No. CA0107336, Waste Discharge Requirements for SeaWorld San Diego, San Diego County, Discharge to Mission Bay*. SeaWorld San Diego has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violation in the Complaint and acceptance of the assessment of civil liability in the amount of six thousand dollars (\$6,000) as set forth in the Complaint. The Regional Board will consider accepting a waiver from SeaWorld San Diego at its August 10, 2005 meeting.

Written comments regarding the allegation contained in Complaint No. R9-2005-0129, and/or written comments regarding an acceptance of the waiver will be accepted through Wednesday, July 27, 2005.

The Regional Board's August 10, 2005 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please contact Mr. Paul J. Richter by e-mail at prichter@waterboards.ca.gov or by telephone at (858) 627-2929 or visit the Regional Board's web site at www.waterboards.ca.gov/sandiego.

JOHN H. ROBERTUS
Executive Officer



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Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Arnold Schwarzenegger
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WAIVER OF RIGHT TO A HEARING

Mr. Andrew Fichthorn
SeaWorld Adventure Park
500 SeaWorld Drive
San Diego, California 92109-7904

Administrative Civil Liability
with
Mandatory Minimum Penalties
Complaint No. R9-2005-0129
\$6,000
May 16, 2005

WDID No. 9 000000083

By signing below, I agree to waive the right of SeaWorld San Diego to a hearing before the California Regional Water Quality Control Board, San Diego Region regarding the violation alleged in the above referenced Complaint and I agree to remit payment for the civil liability imposed. I understand that I am authorized to give up the right of SeaWorld San Diego to be heard, and to argue against the allegation made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Print Name

Title

Date

Send this signed form to:

John H. Robertus, Executive Officer
C/O Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency

